

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 13, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 98-3137-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LLOYD V. PELLY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. Lloyd Pelly appeals from an order on sentence credit. The issue is whether he should have received credit for time served while electronically monitored on probation. We conclude that he is not entitled to the credit, and therefore reverse.

¶2 Pelly received probation on a felony drug conviction. While on probation he was placed on electronic monitoring by his probation officer to insure his attendance at drug treatment classes. He was sentenced after revocation to a six-year prison term. The trial court denied sentence credit for the fifty-six days he spent on electronic monitoring.

¶3 In *State v. Magnuson*, 2000 WI 19, ¶25, 233 Wis. 2d 40, 606 N.W.2d 536, the supreme court held that an offender is in custody and entitled to sentence credit for any time when the offender is subject to prosecution for escape. Probationers are not subject to escape prosecutions. *See* WIS. STAT. § 946.42(1)(a) (1997-98). The trial court therefore properly denied credit.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

